

INTRODUCTION

1 2. Plaintiff, Evenflow, Inc. *dba* Dropbox provides a massively successful online
2 file syncing and remote access system called Dropbox.

3 2. For years since the launch of Dropbox, Plaintiff has expended considerable
4 time and resources conducting a comprehensive advertising campaign to promote the
5 Dropbox application under its DROPBOX trademark.

6 3. As a result of Plaintiff's extensive advertising and the success of the
7 Dropbox application, the DROPBOX trademark has gained widespread consumer
8 recognition. Since before 2008, there has been a strong consumer association between
9 the DROPBOX mark and Plaintiff's Dropbox application.

10 4. In or around March 2008—well after Plaintiff had generated strong
11 trademark rights in the DROPBOX mark—Defendant Giri Nirkondar (“Nirkondar” or
12 “Defendant”) transferred the registration of the domain name <www.dropbox.com> (the
13 “Disputed Domain”) to third party Domains By Proxy, Inc., which became the new
14 registrant of the Disputed Domain.

15 5. Thereafter, Defendant, through his contractual relationship with Domains
16 By Proxy, Inc., used the Disputed Domain to operate a commercial website, which
17 displays hyperlinks to Plaintiff's competitors.

18 6. On approximately August 21, 2009, Domains By Proxy, Inc. transferred the
19 Disputed Domain back to Defendant. Since this recent transfer, Defendant has
20 continued to use the Disputed Domain to operate a website displaying hyperlinks to
21 Plaintiff's competitors.

22 7. As a result of Defendant's use of the Disputed Domain, Defendant has
23 caused widespread consumer confusion. Consumers going to the website resolving to
24 the Disputed Domain are looking for Plaintiff's website and Plaintiff's Dropbox
25 application. Instead, these consumers are presented with advertisements for Plaintiff's
26 competitors.
27

8. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. §§1331 & 1338 because the claims arise under the laws of the United States. This Court has jurisdiction over the state law claims under 28 U.S.C. §1337 because the state law claims are so related to the federal claims that they form part of the same case or controversy and arise from a common nucleus of operative facts.

10. This Court has personal jurisdiction over the Defendant because the Defendant resides in Pleasanton, California.

11. Venue is proper pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred within the District. Plaintiff is based in the District and suffered the harm here. Further, Defendant resides in the District.

PARTIES

12. Plaintiff Evenflow, Inc. is a Delaware corporation with its principal place of business in San Francisco, California. Evenflow, Inc. conducts business under its registered fictitious business name, Dropbox.

13. Defendant Giri Nir kondar is an individual residing in Pleasanton, California.

INTRADISTRICT ASSIGNMENT

14. For the purposes of Local Rule 3-2(c), this action should be assigned to the San Francisco division of the Court because San Francisco is the county in which a substantial part of the events or omissions which give rise to the claim occurred.

BACKGROUND

Plaintiff's Business & DROPBOX Trademark

15. Plaintiff offers computer users an online virtual storage application called Dropbox.

16. Dropbox enables computer users to store and sync files online and

1 between computers. Once users install the Dropbox application, users can drag any
2 computer file into their Dropbox folder, which appears on the users' desktops. When a
3 computer file is placed in the Dropbox folder, the file becomes accessible to that user on
4 any computer on which the Dropbox application has been installed. Files in the Dropbox
5 folder may be shared with other Dropbox users or accessed from the Web.

6 17. Currently, Plaintiff offers users a free Dropbox account, which provides
7 users with two gigabytes of storage. Users may upgrade to a 50 or 100 gigabyte
8 Dropbox account by paying a monthly or yearly fee.

9 18. Dropbox employs secure socket layer transfers with AES-256 encryption to
10 ensure its users' security, and Dropbox supports revision history so deleted files may be
11 recovered from any of the synced computers.

12 19. The combination of Dropbox's simplicity and utility has been met with a
13 resounding success. Dropbox has won the praise of computer experts and everyday
14 computer users alike. Businesses, educators, students, children, and grandparents have
15 all embraced Dropbox. In the years since the introduction of Dropbox, Plaintiff has
16 enjoyed a tremendous success and has acquired a devoted clientele.

17 20. Demand for Dropbox has been constantly growing. Millions of users visit
18 Dropbox's website every month, located at <getdropbox.com>. And this number has
19 been steadily increasing since the introduction of Dropbox.

20 21. Plaintiff has expended considerable time and effort promoting and
21 advertising Dropbox, using DROPBOX as its brand name. To date, Plaintiff has spent in
22 excess of \$1 million dollars marketing the DROPBOX brand.

23 22. Plaintiff has also engaged in an aggressive media relations effort regarding
24 DROPBOX. As a result, the DROPBOX application and mark have also enjoyed
25 numerous references in a variety of prominent media outlets like the New York Times,
26 Washington Post, USAToday and Techcrunch.com, as well as media outlets throughout
27 Europe and Asia. Moreover, Plaintiff has received the Webware 100 award by CNET,
28 PC Magazine's Editor's choice Award, and Mac Life's Editor's Choice for its Dropbox

1 application.

2 23. Plaintiff's advertising and promotion of Dropbox and the DROPBOX mark
3 have been highly successful given the exponential growth that Plaintiff has enjoyed.

4 24. As a result of Plaintiff's substantial marketing investment and the quality of
5 its Dropbox application, consumers have come to associate the DROPBOX mark with
6 Plaintiff and Plaintiff's Dropbox application.

7 25. As a result of Plaintiff's advertising and promotion, industry awards and
8 media references, the DROPBOX mark has become famous throughout the United
9 States, and is widely associated with Plaintiff's Dropbox application.

10 **Defendant's Misconduct**

11 26. Defendant Nirkondar registered the Disputed Domain and subsequently re-
12 registered the Disputed Domain multiple times, including on June 27, 2007.

13 27. Despite Defendant Nirkondar's registration and re-registration of the
14 Disputed Domain, Nirkondar did not use the Disputed Domain in commerce or use the
15 word, "dropbox," in commerce prior to March 2008.

16 28. By March 2008 Plaintiff had already experienced tremendous success with
17 its Dropbox service and had spent considerable time and money promoting and
18 advertising the Dropbox application and the DROPBOX mark. Thus, by March 2008,
19 Plaintiff's customers had come to associate the DROPBOX trademark with Plaintiff and
20 Plaintiff's Dropbox application.

21 29. Recognizing the value that Plaintiff had generated for its DROPBOX
22 trademark, in March 2008 Defendant Nirkondar transferred registration the Disputed
23 Domain to Domains By Proxy, Inc., which became the new registrant of the Disputed
24 Domain.

25 30. Pursuant to the terms of the agreement with Domains by Proxy, Nirkondar
26 retained the benefits of the domain name, including but not limited to the ability to
27 associate the domain name with a commercial website and to generate revenue from
28 that website.

1 31. After Nirkondar transferred the Disputed Domain to Domains By Proxy, Inc.,
2 Nirkondar began to use the Disputed Domain—which is identical to Plaintiff's DROPBOX
3 trademark—in a bad faith effort to generate revenue from the Disputed Domain and
4 trademark.

5 32. Specifically, after transferring the Disputed Domain to Domains By Proxy,
6 Defendant Nirkondar began operating a website resolving to the Disputed Domain. On
7 that website, Defendant displayed hyperlinks to Plaintiff's competitors. As limited
8 examples, Defendant's website displayed hyperlinks to Box.net, Diino, and GoToMyPC,
9 all of which are file syncing and remote access services, like Dropbox. On information
10 and belief, Defendant generated revenue every time a computer user went to the
11 Disputed Domain and clicked on one of the hyperlinks.

12 33. In August 2009, Domains by Proxy transferred the registration of the
13 Disputed Domain back to Defendant, thereby permitting Defendant to register the
14 Disputed Domain in the name of Defendant.

15 34. Following this transfer of registration, Defendant continued to use the
16 Disputed Domain to operate his commercial website, displaying hyperlinks to Plaintiff's
17 competitors. Defendant continues to use the Disputed Domain in this manner today.

18 35. On information and belief, Defendant continues to generate revenue from
19 the website he operates at the Disputed Domain.

20 36. Defendant has relied on the confusion of Internet users in operating the
21 website resolving to the Disputed Domain. Users seeking Plaintiff's Dropbox website
22 mistakenly enter the Disputed Domain into the URL field of their web browser and go to
23 Defendant's infringing website. Users are then presented with advertisements for
24 Plaintiff's competitors.

25 37. The consumer confusion that has resulted from Defendant's misconduct is
26 manifest and illustrated on message boards and other venues throughout the Internet.
27 As a result of Defendant's misconduct, consumers have been confused about the
28 association between Defendant's website on the one hand and Plaintiff and Plaintiff's

Dropbox application on the other hand.

38. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST CAUSE OF ACTION

CYBERSQUATTING (15 U.S.C. §1125(d))

39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 38 inclusive.

40. Plaintiff has generated substantial rights in the trademark DROPBOX in connection with its computer file syncing service through Plaintiff's continuous use of the DROPBOX mark, its aggressive marketing campaigns, and positive consumer response.

41. Defendant, with bad faith intent to profit from Plaintiff's DROPBOX trademark, registered, trafficked in, and used the Disputed Domain.

42. By the time Defendant Nirkondar started using the Disputed Domain, the DROPBOX mark had become distinctive and had acquired secondary meaning through Plaintiff's continuous use of the mark and Plaintiff's extensive advertising.

43. Defendant Nir kondar obtained registrations for and re-registered the Disputed Domain at times when the DROPBOX mark had become distinctive and had acquired secondary meaning through Plaintiff's continuous use of the mark and Plaintiff's extensive advertising.

44. At the time Defendant transferred registration of the Disputed Domain to Domains By Proxy and at the time Domains By Proxy transferred registration of the Disputed Domain back to Defendant, the DROPBOX mark had become distinctive and had acquired secondary meaning through Plaintiff's continuous use of the mark and Plaintiff's extensive advertising.

45. The Disputed Domain name is identical or confusingly similar to the DROPBOX mark

46. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

47. Defendant's misconduct will continue unless enjoined by this Court.

SECOND CAUSE OF ACTION

INFRINGEMENT OF AN UNREGISTERED TRADEMARK (15 U.S.C. §1125(a))

48. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 38 inclusive.

49. Prior to March 2008, Plaintiff had generated substantial rights in the trademark DROPBOX in connection with its computer file syncing service through Plaintiff's continuous use of the DROPBOX mark, its aggressive marketing campaigns, and positive consumer response.

50. After March 2008, Defendant used in interstate commerce the DROPBOX trademark and false and misleading permutations of the DROPBOX trademark.

51. Defendant's use of the DROPBOX trademark and permutations thereof is likely to cause—and has in fact caused—confusion, mistake, and deception as to the affiliation, connection, or association of Defendant and the website resolving to the Disputed Domain on the one hand and Plaintiff, Plaintiff's Dropbox application, and Plaintiff's DROPBOX trademark on the other hand.

52. Defendant's use of the DROPBOX trademark and permutations thereof is likely to cause—and has in fact caused—confusion, mistake, and deception as to the origin, sponsorship, or approval of the website resolving to the Disputed Domain.

53. The Disputed Domain name is identical or confusingly similar to the DROPBOX mark.

54. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

55. Defendant's misconduct will continue unless enjoined by this Court.

THIRD CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200

56. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1 through 38 inclusive.

57. Prior to March 2008, Plaintiff had generated substantial rights in the trademark DROPBOX in connection with its computer file syncing service through Plaintiff's continuous use of the DROPBOX mark, its aggressive marketing campaigns, and positive consumer response.

58. After March 2008, Defendant used in interstate commerce the DROPBOX trademark and false and misleading permutations of the DROPBOX trademark.

59. Defendant's use of the DROPBOX trademark and permutations thereof is likely to cause—and has in fact caused—confusion, mistake, and deception as to the affiliation, connection, or association of Defendant and the website resolving to the Disputed Domain on the one hand and Plaintiff, Plaintiff's Dropbox application, and Plaintiff's DROPBOX trademark on the other hand.

60. Defendant's use of the DROPBOX trademark and permutations thereof is likely to cause—and has in fact caused—confusion, mistake, and deception as to the origin, sponsorship, or approval of the website resolving to the Disputed Domain.

61. By engaging in the above-described misconduct, Defendant has engaged in unfair and fraudulent business acts and practices and has engaged in unfair, deceptive, untrue or misleading advertising.

62. Thus Defendant has committed unfair competition in violation of California Business and Professions Code section 17200.

63. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

64. Defendant's misconduct will continue unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That the Court enter judgment against the Defendant that it has

a. Committed and is committing cybersquatting in violation of 15 U.S.C. §1125(d);

b. Committed and is committing acts of infringement of an unregistered

trademark in violation of 15 U.S.C. §1125(a);

c. Committed and is committing acts of unfair competition in violation of California Business & Professions Code section 17200.

2. That the Court issue injunctive relief against Defendant, requiring Defendant to transfer the Disputed Domain to Plaintiff.

3. That the Court order Defendant to pay Plaintiff's damages as follows:

a. The greater of Plaintiff's damages (composed of Plaintiff's actual damages and Defendant's profits) in an amount to be determined according to proof or Plaintiff's statutory damages of \$100,000 pursuant to 15 U.S.C. §1117(a), (d).

b. Plaintiff's damages (composed of Plaintiff's actual damages and Defendant's profits) in an amount to be determined according to proof pursuant to 15 U.S.C. §1117(a) for Defendant's willful infringement of Plaintiff's unregistered trademark;

c. Plaintiff's restitutionary damages for Defendant's violation of California Business and Professions Code section 17200.

d. Such other damages as the Court shall deem appropriate;

e. Interest, including prejudgment interest, on the foregoing sums;

DATED: September 25, 2009

KRONENBERGER BURGOYNE, LLP

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Dropbox

REQUEST FOR JURY TRIAL

Plaintiffs hereby demand a trial of this action by jury.

DATED: September 25, 2009

KRONENBERGER BURGOYNE, LLP

By: s/ Karl S. Kronenberger

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